Commentary: 'Drive-by' lawsuits hurt property owners, ADA

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By Alan Pentico

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The rental housing business is very much a people-driven industry — without residents, we don't have a business. Providing clean, safe housing for people of all ages and backgrounds is the driving force behind the multifamily housing industry, and that includes ensuring access for people with disabilities.

Unfortunately, our industry is being targeted in “drive-by" lawsuits that claim violations of compliance with the Americans with Disabilities Act (ADA).

The San Diego County Apartment Association is well-educated when it comes to the landmark Americans with Disabilities Act of 1990, and we are proud of our work to ensure that multifamily housing properties are properly accessible.

According to the U.S. Department of Housing and Urban Development, privately owned and publicly assisted housing in a building of four or more units — built after March 1991 — must meet the accessibility requirements of the Fair Housing Act. HUD extended its guidance in 1996 with the Fair Housing Act Design Manual.

Not everyone agrees with the compliance records and efforts on rental properties in our region.

Too often, an attorney or activist claiming to represent the interests of the disabled will file a lawsuit, pointing out a perceived violation of accessibility compliance. Being served with a lawsuit is often the first notice of any alleged violation that a property owner will receive.

Several years ago, a wave of tens of thousands of such lawsuits — abuses of disability access law in which plaintiffs demanded monetary settlements — swept across California. Ultimately, some attorneys were disciplined, even disbarred.

Lawmakers took action, resulting in the 2012 Steinberg-Dutton law, which specifically set out to stop abuse in the litigation of accessibility claims. Despite these efforts to curb false claims, these legal actions and threats still occur, and now the rental industry is the target.

This is happening in many ways, SDCAA members and others say, including “ADA inspectors” who enter properties and issue notices of alleged violations to scare owners into hiring their services.

What is truly troublesome to SDCAA leaders and members is the fact that such bogus lawsuits distract from legitimate ADA concerns. These legal actions are harmful and yield no benefit or meaningful impact to people who are affected by real accessibility violations. Further, they are costly — in emotions, money and time. Money spent in defense of frivolous lawsuits leaves less money for modifications to help with accessibility.

There are steps property owners and managers can take to protect themselves while ensuring that residents of all abilities are also protected. Rental industry professionals also should be armed with the knowledge of what accessibility laws require and protect.

The Steinberg-Dutton law, which initially was drafted with the goal of reducing abuse in the litigation of accessibility claims, includes provisions that are aimed at informing businesses of their responsibility to comply with state and federal access laws. The law also provides clarifications to the Construction-Related Accessibility Standards Compliance Act.

The Steinberg-Dutton bill has several provisions regarding frivolous accessibility lawsuits, including — perhaps most significantly — a ban on demands for money when a plaintiff alleges a violation of construction-related accessibility and requests money or an agreement to accept money.

Any demand letter or complaint that alleges a construction-related accessibility violation must state sufficient facts that identify the basis for the claim, the law says. The complaint must include an explanation of the specific access barrier, the date of the alleged violation and how the barrier was encountered.

Professionals in the rental housing industry can protect themselves and reduce exposure to access claims by having their property audited by a Certified Access Specialist. A CASp is a consultant who has been tested and certified by the state, meeting minimum requirements of knowledge related to construction-related accessibility standards.

According to the State Department of General Services, Division of the State Architect, this consultant will know the standards that apply to a property based on its age and history of improvements.

A CASp consultant can conduct a site audit during a property visit, and identify observable accessibility barriers. Property owners receive a report and a CASp

certificate. The certificate would establish “substantial compliance” or “compliance pending.”

A CASp inspection and certification gives property owners the opportunity to complete any compliance repairs based on the report, and plan for future, possibly expensive revisions.

The Division of the State Architect provides details on hiring Certified Access Specialists and a directory of consultants on its website. Property owners can further educate themselves on accessibility compliance by reviewing the Fair Housing Accessibility FIRST initiative.

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